



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 17, 1993

Honorable David Aken
San Patricio County Attorney
San Patricio County Courthouse
Room 102
Sinton, Texas 78387

Letter Opinion No. 93-49

Re: Authority of the San Patricio County
Commissioners Court to take certain actions in
winding up the Taft Hospital District (RQ-531)

Dear Mr. Aken:

On behalf of the county auditor of San Patricio County (the "county"), you ask a number of questions about the dissolution of the Taft Hospital District (the "hospital district") which is located in the county. The hospital district was created by Acts 1965, 59th Leg., ch. 567, at 1236 (the "enabling act"), as amended by Acts 1973, 63d Leg., ch. 534, at 1386, pursuant to the legislature's authority under article IX, section 9 of the Texas Constitution. Pursuant to the enabling act, the county commissioners court ordered the dissolution of the hospital district on May 8, 1989, following an election in which the voters approved the dissolution.¹ Thereafter, the hospital district transferred all records, funds, and assets to the commissioners court which has wound up the operation and affairs of the hospital district. The only remaining assets of the hospital district are cash, accounts receivable, delinquent taxes and medical records. In essence, your questions relate to the disposition of these remaining assets by the commissioners court.

Both article IX, section 9 of the Texas Constitution and the enabling act specifically address dissolution. The constitutional provision provides in pertinent part:

The Legislature may also provide for the dissolution of hospital districts provided that a process is afforded by statute for:

- (1) determining the desire of a majority of the qualified voters within the district to dissolve it;
- (2) disposing of or transferring the assets, if any, of the district;
and
- (3) satisfying the debts and bond obligations, if any, of the district, in such manner as to protect the interests of the citizens

¹You do not ask, and we do not address, whether the commissioners court's actions have complied with the enabling act's dissolution procedures set forth in section 17, subsections (a) through (e).

within the district, including their collective property rights in the assets and property of the district, provided, however, that any grant from federal funds however dispensed, shall be considered an obligation to be repaid in satisfaction and provided no election to dissolve shall be held more often than once each year. In such connection, the statute shall provide against disposal or transfer of the assets of the district except for due compensation unless such assets are transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way to benefit citizens formerly within the district.

This language was added to article IX, section 9 of the Texas Constitution in 1966. *See* H.J.R. No. 48, Acts 1965, 59th Leg., at 2225 (adopted Nov. 8, 1966). Although it was adopted after the enabling act was enacted in 1965, we construe the enabling act in light of the mandatory language in the constitutional provision.² Section 17, the enabling act's dissolution provision, provides in pertinent part:

(d) If a majority of the qualified electors who own taxable property within the District and have rendered that property for taxation and who vote in the election vote for dissolution of the District, the Commissioners Court shall order the dissolution of the District and place a copy of the order in its minutes.

. . . .

(f) Immediately after the order to dissolve the District is made, the Board of Directors shall transfer all records, funds, and assets over to the Commissioners Court. The Court shall wind up the operation and affairs of the District and shall determine the validity of all claims against the District and satisfy totally all valid claims.

(g) When all claims have been settled the Commissioners Court shall by written order, entered upon the minutes of the court, declare the District dissolved. The court shall file a copy of this final order with the county clerk. The District ceases to exist upon the filing of the order with the clerk.

(h) After payment of all claims against the District, any asset of the District remaining shall be liquidated and the proceeds shall be returned to the taxpayers of the District in the same proportion to the

²To do otherwise would render the enabling act unconstitutional to the extent it is not consistent with article IX, section 9.

tax paid by the taxpayer for the current year as the excess of the assets bears to the total taxes levied for the current year.

.....

(k) If the District is dissolved, all power and authority to provide hospital services and medical care shall revert to the county, municipality, or other political subdivision which had that power and authority before the District was created.

Finally, we also note that a special-purpose district, such as a hospital district, may "exercise only such powers as have been expressly delegated to it by the Legislature, or which exist by clear and unquestioned implication." *Tri-City Fresh Water Supply Dist. No. 2 of Harris County v. Mann*, 142 S.W.2d 945, 946 (Tex. 1940). Implied powers are those that are "indispensable to . . . the accomplishment of the purposes of [the district's] creation." *Id.* at 947; *see also* Attorney General Opinions DM-66 (1991); JM-258 (1984).

First, you note that subsection (f) of the foregoing section requires the commissioners court to "determine the validity of all claims against the District and satisfy totally all valid claims," and that subsection (g) states in pertinent part that "[w]hen all claims have been settled the Commissioners Court shall by written order, entered upon the minutes of the court, declare the District dissolved." You state that the commissioners court has paid all valid *known* claims against the hospital district. You ask:

May the Commissioners Court declare the district dissolved as it has satisfied all KNOWN claims or must it wait until the statutes of limitation has run against possibly UNKNOWN claims before declaring the district dissolved?

In essence, you ask whether the commissioners court may issue a final order declaring the hospital district dissolved under subsection (g) given the possibility that there may exist unknown claims against the hospital district. We believe that it is sufficient for the commissioners court to pay all *known* claims. Nothing in the constitution or section 17 requires the commissioners court to seek out unknown claims or to delay declaring the hospital district dissolved until the statute of limitations has run on such claims, and we do not believe such a requirement can be implied.

Next you ask whether the proceeds of the hospital district's remaining assets may be distributed "by delivering them to a governmental agency whose boundaries are coextensive with [the hospital district] (such as the Taft Emergency Medical Service)." Subsection (h) of section 17 of the enabling act expressly provides that "[a]fter payment of all claims against the District, any asset of the District remaining shall be liquidated and the proceeds shall be returned to the taxpayers." The enabling act makes no provision for the

distribution of remaining assets to another governmental entity or political subdivision.³ Therefore, we conclude that the proceeds must be distributed in accordance with section 17, subsection (h).

Given this conclusion, we address your questions about distribution of the hospital district's assets under subsection (h) of section 17 of the enabling act, which provides in pertinent part that "the proceeds shall be returned to the taxpayers of the District in the same proportion to the tax paid by the taxpayer for the *current year* as the excess of the assets bears to the total taxes levied for the *current year*." (Emphasis added). First, you ask to what year the term "current year" in subsection (h) refers. You point out that the hospital district has not levied a tax since 1988, and that if the term "refer[s] to the year of distribution, then there will be no taxpayers who paid taxes for that year as the district has ~~ceased levying taxes.~~" Such a result would conflict with the intent of subsection (h) to distribute the proceeds to the taxpayers. For this reason, we conclude that the term "current year" must be construed to mean the last year in which taxes were levied.

You also ask if the distribution under subsection (h) is to be made only to taxpayers who have paid all of their taxes, or if it may also be made to taxpayers who have failed to pay some or all of their taxes. Again, subsection (h) provides that "the proceeds shall be returned to the taxpayers of the District in the same proportion to the tax *paid* by the taxpayer" (Emphasis added.) The distribution may not be made to taxpayers who have failed to pay taxes, but must be made to all taxpayers who have *paid* taxes prior to the date of distribution, even those taxpayers who were tardy in doing so. Furthermore, subsection (h) does not prohibit the distribution of proceeds to a taxpayer who has paid only part of his or her tax liability. Such a taxpayer has still *paid* taxes. The share of such a taxpayer in the distribution, of course, must be calculated based upon the taxes that he or she has actually paid.

Finally, you ask if it is the responsibility of the commissioners court to make the distribution. It is clear from section 17 of the enabling act that the legislature intended for the commissioners court to make the distribution. Under subsection (f), the hospital district's assets were transferred to the commissioners court, which is required to wind up the operation and affairs of the district. The distribution of the proceeds of the hospital district's assets is part of the winding up of the hospital district, the responsibility for which is clearly vested in the commissioners court.

Next you ask a series of questions about the hospital district's assets. First, you state that during the winding up process, the cash of the hospital district has been on

³We note that article IX, section 9 of the Texas Constitution authorizes the legislature, in enacting a hospital district enabling act, to provide that upon dissolution its assets may be "transferred to another governmental agency, such as a county, embracing such district and using such transferred assets in such a way to benefit citizens formerly within the district." The enabling act at issue here, however, contains no such provision, and we do not believe that article IX, section 9 *requires* that it contain such a provision. Therefore, we do not take this language into account in construing the enabling act.

deposit in an interest bearing account. You ask if the interest is "part of the proceeds to be distributed, does it belong to the county, or does it belong to someone else?" Clearly, the interest earned on the hospital district's assets is also an asset of the hospital district, just as it would be if the hospital district were not undergoing dissolution. The enabling act makes no provision for the transfer of any of the hospital district's assets to another governmental entity or political subdivision. Furthermore, article IX, section 9 of the Texas Constitution provides that an enabling statute "*shall* provide against disposal or transfer of assets of the district." (Emphasis added.) Therefore, the interest must be disposed of with the other remaining hospital district assets pursuant to section 17, subsection (h) of the enabling act.

You also ask about the accounts receivable:

How should the accounts receivable be liquidated? May the Commissioners Court sell the accounts receivable? May it forgive the payment of the accounts receivable? What is the status of accounts receivable (if any) collected after final distribution?

Article IX, section 9 of the Texas Constitution requires an enabling statute to "provide against disposal or transfer of the assets of the district *except for due compensation*." (Emphasis added.) In addition, section 17, subsection (h), of the enabling act, provides in pertinent part that "any asset of the District remaining shall be liquidated."⁴ We believe these provisions together, by implication, authorize the commissioners court to sell any asset of the hospital district, including accounts receivable, provided it does so for due compensation.⁵

Neither article IX, section 9 of the Texas Constitution nor the enabling act authorizes the commissioners court to forgive accounts receivable, nor can such authority be implied. Indeed, we believe this is prohibited by article IX, section 9 of the Texas Constitution which requires that an enabling statute "provide against disposal or transfer of the assets of the district," and by article III, section 55, of the Texas Constitution which prohibits the legislature from authorizing a release or relinquishment of an obligation due to the state, a county "or defined subdivision thereof."⁶ Furthermore, the forgiveness of

⁴Because article III, section 55, of the Texas Constitution prohibits the legislature from authorizing a release or relinquishment of an obligation due to a county, we believe that the enabling act alone would not be sufficient to authorize the commissioners court to sell accounts receivable.

⁵In addition, we note that section 130.901 of the Local Government Code provides that a commissioners court "may sell the rights of the county to any judgment proceeds belonging to the county" under certain circumstances. We do not address here whether this provision would apply to any judgments the county has obtained on behalf of the hospital district.

⁶Article III, section 55 does authorize the legislature to authorize the release of delinquent taxes which have been due for a period of at least ten years.

accounts receivable could run afoul of sections 51 and 52 of article III, which generally prohibit the use of public funds for private purposes.⁷

Finally, because the enabling act does not address the status of accounts receivable collected after the distribution of the proceeds of the liquidation of the hospital district's assets or provide for any subsequent distributions, we conclude that the legislature intended the commissioners court to liquidate all assets before the distribution. Therefore, the commissioners court should not distribute the proceeds until all the accounts receivable are sold or have been collected.

You ask essentially the same question about delinquent taxes:

How should the delinquent taxes be liquidated? Are the delinquent taxes uncollectible as the taxing entity (the district) no longer exists? May the Commissioners Court sell the delinquent taxes? May it forgive the payment of the delinquent taxes? What is the status of delinquent taxes (if any) collected after final distribution?

Because the commissioners court has not yet entered a final order declaring the hospital district dissolved under section 17, subsection (g) of the enabling act, we disagree with your assumption that the hospital district no longer exists. Therefore, the taxes are not uncollectible for that reason.⁸

Section 9 of the enabling act provides that the hospital district's taxes "shall be collected . . . by the assessor and the collector on the school district tax values, and in the same manner and under the same conditions as the school district taxes."⁹ We are not aware of any provision in the Tax Code which authorizes school districts to forgive delinquent taxes.¹⁰ In addition, for the reasons stated above with respect to accounts

⁷See *Sullivan v. Andrews County*, 517 S.W.2d 410 (Tex. Civ. App.—El Paso 1974, writ ref'd n.r.e.); Attorney General Opinions DM-66 (1991); JM-258 (1984); H-966 (1977); H-16 (1973); M-912 (1971); M-256 (1968).

⁸Even if your assumption that the hospital district has already ceased to exist were correct, however, the commissioners court is obviously the hospital district's successor-in-interest for all its outstanding liabilities and accounts receivable, including delinquent taxes, until the final order of dissolution is issued.

⁹Acts 1973, 63d Leg., ch. 534, at 1386 (amending enabling act, section 9).

¹⁰We note that section 33.05 of the Tax Code requires a collector for a taxing unit to cancel and remove from the delinquent tax roll "a tax on real property that has been delinquent for more than 20 years or a tax on personal property that has been delinquent for more than 10 years if there is no pending litigation concerning the delinquent taxes" See also *supra* footnote 5. This provision requires the collector to cancel such delinquent taxes. It does not authorize the governing body of a taxing unit to forgive an existing tax liability.

receivable, forgiveness of delinquent taxes could also possibly run afoul of article III, sections 51, 52 and 55, and article IX, section 9 of the Texas Constitution. We therefore conclude that the commissioners court is not authorized to do so.

Although taxing entities are not generally authorized to sell delinquent taxes, we conclude that the commissioners court is impliedly authorized under the enabling act to sell the delinquent taxes in these very limited circumstances. Section 17, subsection (h), of the enabling act charges the commissioners court with liquidating the hospital district's remaining assets as follows: "After payment of all claims against the District, *any* asset of the District remaining *shall* be liquidated" (Emphasis added.) We believe that the authority to liquidate delinquent taxes by selling them is indispensable to the accomplishment of this duty. *See Mann, supra*. Of course, the delinquent taxes must be sold for due compensation. Tex. Const. art. IX, § 9. For the reasons stated above with respect to accounts receivable, the commissioners court should not distribute the proceeds until the delinquent taxes are sold or have been collected.

Finally, you ask two questions regarding whether the county may recoup its expenses in winding up the hospital district:

Is the county entitled to retain storage expenses [for storage of the hospital district's medical records] from the money to be distributed?

Is the county entitled to retain administrative costs [for the expenses it incurs in dissolving the hospital district] from the money to be distributed?

Although we recognize that the winding up of the hospital district places a financial burden on the county, neither article IX, section 9 of the Texas Constitution nor the enabling act authorize the commissioners court to recoup any of its expenses in winding up the hospital district, nor do we believe this authority can be implied. Indeed, we conclude that the constitutional provision's express prohibition against the transfer of the hospital district's assets precludes the commissioners court from recouping the county's expenses by transferring some of the hospital district's remaining assets to the county.


S U M M A R Y

The San Patricio County Commissioners Court, in winding up the Taft Hospital District, is not required to delay declaring the hospital district dissolved until the statute of limitations has run on unknown claims against the hospital district. The commissioners court is not authorized to transfer the assets of the hospital district to another governmental agency.

The term "current year" in section 17(h) of the enabling act, which provides for the distribution of the proceeds of the liquidated assets of the hospital district, means the last year in which taxes were levied. Section 17(h) prohibits making the distribution to taxpayers who have failed to pay taxes, but requires that it be made to all taxpayers who have *paid* taxes prior to the date of distribution, even taxpayers who have paid only part of their tax liability. It is the responsibility of the commissioners court to make the distribution.

Interest earned on assets of the hospital district must be disposed of with the hospital district's other remaining assets. The commissioners court is authorized to liquidate the hospital district's accounts receivable and delinquent taxes by selling them for due compensation, but may not forgive them. The commissioners court should not distribute the proceeds until all the accounts receivable and delinquent taxes are sold or have been collected. The commissioners court is not authorized to recoup any of its expenses in winding up the hospital district.

Yours very truly,

A handwritten signature in cursive script, reading "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee